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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/753,082	12/28/2000	Anthony N. Sarra	10559/316001/P9677	3510
7590	04/07/2004		EXAMINER	
U.P. PETER ENG WILSON SONSINI GOODRICH AND ROSATI 650 PAGE MILL ROAD PALO ALTO, CA 94304			LE, DIEU MINH T	
			ART UNIT	PAPER NUMBER
			2114	10
DATE MAILED: 04/07/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/753,082	SARRA ET AL.
	Examiner	Art Unit
	Dieu-Minh Le	2114

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 07 January 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-30 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

1. This Office Action is in response to the amendment filed January 07, 2004 in application 09/753,082.

2. Claims 1-30 are again presented for examination.

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

This rejection is being applied for the same reasons set forth in the previous Office Action paper number 8, paragraphs 2-5 mailed August 27, 2003.

As per claims 1-3, 14-16 see the previous office action for the teaching of Ananthanpillai.

4. Claims 1-3 and 14-16 are again rejected under 35 U.S.C. § 102(b) as being unpatentable Ananthanpillai (US Patent 5,333,308).

Applicant amended claims 1 and 14 by adding "continuously" and asserts that Ananthapillai failed to teach or suggest the following:

4.1 continuously detecting a failure.

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4.2 failure detection in file requests.

Examiner respectfully transverses Applicant's argument as follows:

4.1 First, It is not true that Ananthapillai failed to teach the "continuously detecting a failure and failure detection in file requests" as claimed by Applicant. Examiner again would like to bring Applicant attention to Ananthapillai's method and apparatus for operating a communication network monitor arrangement [abstract, col. 1, lines 40-63]. Ananthapillai explicitly disclosed capabilities of:

- a network management system used for constantly monitoring program including changed, added, other associated with failure (i.e., repairing program) [col. 1, lines 26-32];
- network monitor system used for controlling changes at any time [col. 1, lines 61-63];
- detecting abnormal condition and constantly changes [col. 3, lines 1-5];
- detecting failure, adding, changing status or repairing of programs without having to stop the monitoring program [col. 4, lines 37-46];

- Nndaeamon program continuously run for detecting failures

[col. 6, lines 63 through col. 7, lines 5].

It is clearly that Ananthapillai's network monitoring system does teach the Applicant's invention.

Second, Examiners would like to re-emphasize the "Nndaeamon program" disclosed by Ananthapillai. This Nndaeamon program is used within the network monitoring system for continuously detecting every function, such as network administration, network control function, execution process, running activities, etc... [col. 6, line 86 through col. 7, line 5]. This is very clear that Ananthapillai's network monitoring system does explicitly teach the Applicant's invention.

Third, Ananthapillai clearly demonstrated the failure detection in file request via its error detection in status program [col. 6, lines 42 and col. 9, lines 42-51]]. In addition, Ananthapillai also addressed the network management system (i.e., including configuration, accounting; performance, etc.. programs or files) used for detecting and managing failure within the computer application-based program. Therefore, it is very clear that Ananthapillai's network monitoring system does explicitly teach the Applicant's invention.

4.2 First, it is not true that Ananthanpillai fail to teach the "failure detection in file requests." Ananthanpillai demonstrated a communication network management including a repair program (i.e., files) and a network monitoring system used for controlling its operational and user-defined table (i.e., program files) [fig. 4, col. 1, lines 40-63]. Ananthapillai further illustrated the error or failure detection by the program or file repair request [col. 5, lines 19-22], changed invoked for error or failure detection in program or files [col. 6, lines 41-42]. Therefore, it is clear that Ananthapillai clearly teaches the Applicant's limitation, which is the "failure detection in file requests."

Second, Ananthanpillai explicit address the capability of error or failure monitoring, detecting, and correcting within the computer networking environment [col. 8, lines 22-35]. Therefore, this limitation is clearly taught by Annanthapilliai.

5. Claims 4-13 and 17-30 are again rejected under 35 U.S.C. § 103(a) as being unpatentable Ananthanpillai (US Patent 5,333,308) in view of Calvert et al. (US Patent 5,349,674 hereafter referred to as Calvert).

As per claims 4-13 and 1-30 see the previous office action for the teaching of Ananthanpillai and Calvert as well as the motivation and reasons for combined.

Applicant amended claim 23 by adding "continuously" and asserts that Ananthapillai in combining with Calvert failed to teach or suggest the following:

5.1. continuously detecting a failure;

Examiner respectfully transverses Applicant's argument as follows:

5.1 This argument is the same as 4.1's argument. Therefore, response to this argument is same as 4.1 above.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dieu-Minh Le whose telephone number is (703) 305-9408. The examiner can normally be reached on Monday-Thursday from 6:30 AM to 4:00 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel, can be reached on (703) 305-9713. The fax phone number for this Group is (703) 872-93069.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.



DIEU-MINH THAI LE
PRIMARY EXAMINER
ART UNIT 2114